167-120

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

NO. 13, ORIGINAL.

EX PARTE: IN THE MATTER OF CHARLES JOHNSON, PETITIONER.

RETURN TO RULE.

FILED FEBRUARY 6, 1897.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1896.

EX PARTE: CHARLES JOHNSON.

Return to rule to show cause.

Now comes Charles L. Stowe, United States marshal for the southern district of the Indian Territory, and for return to the rule entered against him by this court on the 18th day of January, 1897, states:

That on the 24th day of July, 1896, a warrant was placed in his hands by Arthur Walcott, United States commissioner for the southern district of the Indian Territory, commanding respondent to arrest the said Charles Johnson upon the charge of rape, alleged to have been committed upon one Pearl McCormick.

On the 25th day of July, 1896, a warrant was issued out of the commissioner's court by J. C. Gibbons, who was United States commissioner for the eastern district of Texas, charging the said Charles Johnson with the crime of rape, charged to have been committed upon the said Pearl McCormick. A United States deputy marshal for the said eastern district of Texas demanded of this respondent a surrender of the said Charles Johnson in obedience to said writ, but the same was refused.

On the 27th day of July, 1896, the said Arthur Walcott, as commissioner aforesaid, issued a warrant and placed in the hands of this respondent, commanding him to arrest the said Charles Johnson upon the charge of assault with intent to commit a rape upon one Mrs. N. A. Marshall.

On the 17th day of October, 1896, at a regular term of the United States court for the southern district of the Indian Territory, held at Ardmore, in said Territory, the grand jury of said court returned an indictment against the said Charles Johnson, charging him with the crime of assault with intent to commit a rape upon the person of the said Mrs. N. A. Marshall.

On the 9th day of October, 1896, at a regular term of the United States court for the southern district of the Indian Territory, held at Ardmore, in said Territory, the grand jury of said court returned into open court an indictment against the said Charles Johnson, charging him with the crime of rape, committed upon the person of one Pearl McCormick.

On the 17th day of October, 1896, during the said term of court, the said Charles Johnson was placed upon trial before a jury of said court upon the said charge of rape, after arraignment and plea of not guilty, and on said date the jury returned into open court the following verdict:

"United States vs. Charles Johnson, No. 2916. We, the jury, duly empanelled and sworn to try the within-named defendant, Charles Johnson, do, upon our oaths, find the said defendant guilty in manner and form as charged in the within indictment."

On the 23rd day of October, 1896, the said Charles Johnson, in open court, was sentenced to be hanged on the 19th day of February, 1897.

A certified copy of said indictment, charging the said Charles Johnson with the crime of rape, is attached to this answer, and marked Exhibit A. A certified copy of the sentence of the court is hereto attached, and marked Exhibit B.

Respondent states that, in obedience to said judgment, he is now holding the said Charles Johnson for the purpose of executing the said sentence of the court on the 19th day of February, 1897.

Your respondent further states that the said Charles Johnson has never at any time since the commission of said offense, to wit, on the 24th day of July, 1896, been in the custody of any deputy marshal or other officer of the said United States court for the eastern district of Texas.

Respondent further states that at the time of the commission of this offense the said United States court for the eastern district of Texas was not in session, and that no term of said court was convened until the third Monday in November, 1896, long after this defendant was tried, convicted, and sentenced to be hanged, and that the said United States court for the eastern district of Texas never at any time acquired jurisdiction of the person of the said Charles Johnson, or of the offense for which he was indicted and convicted.

And further your respondent saith not.

C. L. STOWE,
U. S. Marshal.

Subscribed and sworn to before me this the 25*rd* day of January, 1897.

[SEAL.] JOSEPH W. PHILLIPS,
Clerk.

EXHIBIT A.

UNITED STATES OF AMERICA,
Indian Territory, Southern District, ss:

In the United States court in the Indian Territory for the southern district of said Territory, at the Oct. term, A. D. 1896.

UNITED STATES
vs.
CHARLES JOHNSON, DEFENDANT. } Indictment for rape.

The grand jurors of the United States of America, selected, summoned, empaneled, sworn, and charged to inquire within and for the body of the

southern district of the Indian Territory, in the name and by the authority of the United States, upon their oath do find, present, and charge that one Charles Johnson, who was not then and there member of any Indian nation, on the 24th day of July, A. D. 1896, within the southern district of the Indian Territory, did unlawfully and feloniously, forcibly, and against her will and consent, carnally know one Pearl McCormick, the said Pearl McCormick not being then and there member of any Indian nation, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

A. C. CRUCE,
United States District Attorney.

Verdict.

We, the jury, duly empaneled and sworn in the within styled action, do find the defendant guilty in manner and form as charged in the within indictment.

J. F. MCCLATCHY,
Foreman.

This transcript is a true and perfect copy of the original indictment issued by me in this cause this 23 day of Jan., 1897.

[SEAL.] JOS. W. PHILLIPS, *Clerk.*
By ——— ———, *D. C.*

(Indorsed:) Criminal docket, No. 2916. In the United States court in the Indian Territory, southern district. United States vs. Charles Johnson. Indictment for rape. A true bill. Jno. S. Hammer, foreman of the grand jury. Filed in open court this 9 day of Oct., 1896. Jos. W. Phillips, clerk. By ——— ———, deputy. A. C. Cruce, United States district attorney. Witness for the United States, Pearl McCormick, A. S. Pulliam, J. S. Sander, ——— Vennon.

EXHIBIT B.

United States court, southern district.

UNITED STATES OF AMERICA,
Indian Territory, ss:

At a regular term of the United States court in said Territory and district begun and holden at the court-house in Ardmore, in said Territory and district, on the 5th day of October, in the year of our Lord one thousand eight hundred and ninety-six, being the 23rd day of said month, to wit:

On Friday, the 23rd day of Oct., A. D. 1896.

UNITED STATES
vs.
CHARLES JOHNSON. } No. 2619. Indictment for rape.

Present: Hon. Constantine B. Kilgore, judge; Joseph W. Phillips, clerk; Charles L. Stowe, U. S. marshal, an A. C. Cruce, U. S. atty. Attest, Joseph W. Phillips, clerk.

On motion of Andrew C. Cruce, esq., atty. for the United States court in the Indian Territory, southern district, the said defendant, Charles Johnson, was brought to the bar of the court in custody of the marshal for said southern district Ind. Ter'y, and it being demanded of him what he has or can say why the sentence of the law upon his plea—the verdict of guilty heretofore rendered against him by the jury in this cause on the 17th day of October, A. D. 1896—shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said; whereupon, the premises being seen, and by the court well and sufficiently understood, it is considered by the court here that the said Charles Johnson, for his crime aforesaid, on the 19th day of Feb'y, 1897, between sunrise ans sunset, be, by the marshal of this court, hanged by the neck till the said Charles Johnson is dead. It is further considered that the marshal of this court, in whose custody the said Charles Johnson is now here committed, receive and safely keep and convey the body of the said Charles Johnson hence to said jail in the southern district Indian Territory without delay, and deliver him to the custody of the keeper of said jail, who will receive and safely keep the said Charles Johnson in jail in execution of the sentence aforesaid and in conformity of the same for the full period of the time aforesaid. And it is further ordered that the clerk of this court furnish the marshal of this court with two duly certified copies of this judgment, sentence, and order, one of which he shall deliver to the keeper of said jail, and the other returned by the marshal of this court with a full and true account of the execution of the same.

This transcript is a true and perfect copy of the original sentence issued by me in this cause and on record in my office this 23 day of Jan., 1897.

[SEAL.] JOS. W. PHILLIPS, *Clerk.*

By ——— ———, *D. C.*

(Indorsed:) Supreme Court, U. S. October term, 1896. Term No., 13. Original. Ex parte: In the matter of Charles Johnson, petitioner. Return to rule. Filed Feb. 6, 1897.

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Supreme Court of the United States.

OCTOBER TERM, A. D. 1896.

EX PARTE CHARLES JOHNSON.

Petition for Writ of Habeas Corpus.

Motion for Leave to File Petition for Writ.

And now comes the petitioner, Charles Johnson, by John J. Weed, his attorney, and upon the petition and affidavit hereto attached, moves the court for leave to file said petition herein for the reasons therein stated, and for leave to prosecute said petition without any deposit for costs.

JOHN J. WEED,
Attorney for Petitioner.

Hon. JUDSON P. HARMON,
Attorney-General.

Please take notice that on Wednesday, the 13th day of January, 1897, at the opening of the Supreme Court on that day, or as soon thereafter as counsel may be heard for that purpose, I shall present the above motion to said

Court, and request such action thereon as to the said Court may seem proper.

JOHN J. WEED,
Attorney for Petitioner.

Received a copy of the above motion and notice this 12th day of January, 1897.

(signed) Holmes Conrad
Acting *Attorney-General.*

IN THE SUPREME COURT OF THE UNITED STATES.

Ex Parte Charles Johnson.

Your petitioner, Charles Johnson, would respectfully represent that heretofore, to wit, on or about the 24th day of July, 1896, he was arrested and committed to jail by the honorable C. L. Stowe, United States Marshal for the Southern District of the Indian Territory, on a charge of rape; that afterwards, to wit, on the 17th day of October, 1896, after having been indicted by a grand jury on, to wit, the 9th day of October, 1896, he was arraigned and tried by a jury in the United States Court for the Southern District of the Indian Territory and convicted on said charge, and is now under sentence of death.

Your petitioner respectfully shows this honorable Court that, at the time of the alleged commission of the offense, the United States Court for the Southern District of the Indian Territory had no jurisdiction over said offense, but said jurisdiction was vested in the United States Court for the Eastern District of Texas; that after the alleged commission of the offense on, to wit, the 25th day of July, 1896, Honorable J. C. Gibbons, United States Commissioner for the Eastern District of Texas,

issued a warrant for his arrest and placed the same in the hands of the United States Marshal for the said Eastern District of Texas, for execution, and that said Marshal demanded the surrender of your petitioner from the Marshal for the Southern District of the Indian Territory, but his surrender was refused, and that ever since said date he has been illegally restrained of his liberty.

Your petitioner would further represent that, on March 1, 1895, by act of Congress, the United States Court for the Eastern District of Texas retained jurisdiction of all offenses committed within the Southern District of the Indian Territory, where the punishment was imprisonment at hard labor or death, until after September 1, 1896; that, if the offense was committed by your petitioner as alleged, the same was done while the said United States Court for the Eastern District of Texas had sole and exclusive jurisdiction over such offense, committed within the Southern District of the Indian Territory, and the arrest by the United States Marshal and trial by the Court in the Southern District of the Indian Territory was wholly without jrisdiction, and he is now being restrained without any jurisdiction over his person or the offense.

Wherefore, he prays that the most gracious writ of *habeas corpus* issue, and that on final hearing he be discharged or remanded for trial to the Eastern District of Texas. And he will ever pray.

W. A. LEDHELTER,
W. B. JOHNSON,
C. S. HERBERT,
HENRY M. FREEMAN,
JESSE HILL, &
J. B. MAXEY,
Attorneys for Petitioner.

INDIAN TERRITORY, }
Southern District. }

Charles Johnson, being duly sworn, upon oath states that the matters and things above set forth are true.

CHAS. JOHNSON.

Subscribed and sworn to before me this the 18th day of December, 1896.

[SEAL.] JAMES H. MATHERS,
Notary Public, Southern District, Ind. Ter'y.

IN THE SUPREME COURT OF THE UNITED STATES.

Ex Parte Charles Johnson.

Charles Johnson, being first duly sworn, on oath deposes and says: that he is actually too poor and unable to pay the required deposit fee, or any other costs, in order to present a motion for leave to file the petition for a writ of habeas corpus in the above-styled action; that he has no property of any class or character whatever.

Wherefore, he prays that he be allowed to present his motion and such other proceedings as may be necessary, without the requisite amount of deposit being made.

CHAS. JOHNSON.

Subscribed and sworn to before me on this the 4th day of January, A. D. 1897.

[SEAL.] T. B. JOHNSON,
Notary Public, Southern District.

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Office Supreme Court, U. S.
FILED
MAR 22 1897
JAMES H. McKENNEY,
CLERK.

167-120

UNITED STATES SUPREME COURT.

OCTOBER TERM, A. D. 1896.

—o—

Ex-parte in the Matter of
CHARLES JOHNSON,
petitioner for Writ of Habeas Corpus.
} Original No. 13.

—o—

BRIEF AND ARGUMENT FOR PETITIONER.

—o—

JOHN J. WEED,
Attorney for Petitioner.

UNITED STATES SUPREME COURT.

OCTOBER TERM, A. D. 1896.

—o—

Ex parte in the Matter of

CHARLES JOHNSON,

petitioner for Writ of Habeas Corpus.

Original No. 13.

—o—

BRIEF AND ARGUMENT FOR PETITIONER.

I.

Statements of the Petition.

The Petition states :

1st. That the Petitioner was arrested and committed to jail by C. L. Stowe, Marshal of the United States Court for the Southern District of the Indian Territory, charged with the crime of rape, committed in said district on the 24th day of July, 1896 ; and that subsequently, on the 17th day of October, 1896, after having been indicted by the Grand Jury, on the 9th day of October, he was arraigned and tried by a jury in the United States Court for the Southern District of the Indian Territory ; that he was convicted on said charge, and is now under sentence of death.

2d. That at the time of the commission of the alleged offense the United States Court for the Southern District of the Indian Territory had no jurisdiction over said offense, but that said jurisdiction was vested in the United States Court for the Eastern District of Texas.

3d. That on the 25th day of July, 1896, J. C. Gibbons, a Commissioner of the United States Court for the Eastern District of Texas, issued a warrant for the arrest of Petitioner, and placed the same in the hands of the United States Marshal for the Eastern District of Texas; and that said Marshal demanded the surrender of the petitioner by the Marshal for the Southern District of the United States Court for the Indian Territory, and that the surrender of the petitioner by said Marshal was refused; and that ever since said date the petitioner has been illegally restrained of his liberty.

4th. That under the provisions of an act of Congress approved March 1, 1895, (28 Stats. at Large, p. 697, Sect. 9,) the United States Court for the Eastern District of Texas retained jurisdiction of all offenses committed within the Southern District of the Indian Territory, where the punishment was imprisonment at hard labor or death, until September 1st, 1896; and that "if the offense was committed by the petitioner, as alleged, the same was done while the United States Court for the Eastern District of Texas had sole and exclusive jurisdiction over such offense committed within the Southern District (of the United States Court) for the Indian Territory; and the arrest (of petitioner) by the United States Marshal (of the United States Court for the Southern District of the Indian Territory) and the

trial (of petitioner) by the United States Court in the Southern District of the Indian Territory, was wholly without jurisdiction; and petitioner is now being restrained without any jurisdiction over his person or the offense."

II.

Return to Rule.

The court having granted leave to file the said petition, issued a Rule against Charles L. Stowe, United States Marshal for the Southern District of the Indian Territory, requiring him to show cause herein on the 1st day of February, 1897, why the prayer of said petition should not be granted. No return to said Rule having been made on said date the time for making answer was extended until the 1st day of March, 1897.

The return to said Rule filed on the 6th day of February, 1897, admits the facts stated in said petition but seeks to avoid their force and effect by the following averments:

> "Your respondent further states that the said Charles Johnson has never at any time since the commission of shid offense, to wit, on the 24th day of July, 1896, been in the custody of any deputy marshal or other officer of the said United States Court for the Eastern District of Texas.
>
> "Respondent further states that at the time of the commission of this offense, the said United States Court for the Eastern District of Texas was not in session, and that no term of said court was convened until the third Monday in November, 1896, long after this defendant was

tried, convicted and sentenced to be hanged, and that the said United States Court for the Eastern District of Texas never at any time acquired jurisdiction of the person of the said Charles Johnson, or of the offense for which he was indicted and convicted."

III.

Statutes Relating to this Subject.

The first section of the act of March 1, 1895, provides:

> "That the territory known as the Indian Territory, now within the jurisdiction of the United States Court in said Territory, is hereby divided into three judicial districts to be known as the Northern, Central, and Southern Districts. * * * The Southern District shall consist of all the Chickasaw County."

The seventeenth section of the act of March 1, 1889, provides:

> "That the Chickasaw Nation, and that part of the Choctaw Nation described in said act, and all that portion of the Indian Territory not annexed to the District of Kansas by the act approved January sixth, eighteen hundred and eighty-three, and not set apart and occupied by the five civilized tribes, shall from and after the passage of this act be annexed to and constitute a part of the Eastern Judicial District of the State of Texas, for judicial purposes."

The eighteenth section of said act provides that the sessions of said court shall be held at Paris, Texas, twice in each year——

* * * "And the United States Courts herein provided to be held at Paris shall have exclusive original jurisdiction of all offenses committed against the laws of the United States within the limits of that portion of the Indian Territory attached to the Eastern Judicial District of the State of Texas by the provisions of this act, of which jurisdiction is not given by this act to the court herein established in the Indian Territory."

Richardson's Supplement R. S., p. 674.

The *fifth* section of that act conferred criminal jurisdiction upon the United States Court established in the Indian Territory as follows:

"That the Court hereby established, shall have exclusive original jurisdiction over all offenses against the laws of the United States committed within the Indian Territory, as in this act defined, not punishable by death or by imprisonment at hard labor."

Richardson's Supplement R. S., p. 671.

Section 33 of the act of May 2nd, 1890, relating to the establishment of a temporary government for the Territory of Oklahoma, and to enlarge the jurisdiction of the United States Court in the Indian Territory, provides as follows:

"That the United States Circuit and District Courts respectively, for the Western District of Arkansas, and the Eastern District of Texas respectively, shall continue to exercise exclusive jurisdiction as now provided by law, in the Indian Territory as defined in this act, in their respective districts as heretofore established, over all crimes and misdemeanors against the laws of the United States applicable to said Terri-

tory, which are punishable by said laws of the United States by death or by imprisonment at hard labor."

Richardson's Supplement, p. 735.

Section 29 of said act provided:

"That all that part of the United States which is bounded on the North by the State of Kansas, on the East by the States of Arkansas and Missouri, on the South by the State of Texas, and on the West by the Territory of Oklahoma, as defined in the first section of this act, shall, for the purposes of this act, be known as the Indian Territory."

Richardson's Supplement, R. S., p. 781.

The Indian Territory as defined in said act at the time of the commission of the offense charged in the indictment against the petitioner, and of which he was convicted, was "a district of country under the exclusive jurisdiction of the United States," and the petitioner upon being convicted of the crime of rape, was by section 5345 liable to be sentenced to suffer death.

Revised Statutes U. S., p. 1043.

Section 9 of the act approved March 1st, 1895, provides:

"That the United States Court in the Indian Territory shall have exclusive original jurisdiction of all offenses committed in said territory, of which the United States Court in the Indian Territory now has jurisdicton; and after the first day of September, eighteen hundred and ninety-six, shall have exclusive original jurisdiction of all offenses against the laws of

the United States committed in said Territory, except such cases as the United States Court at Paris, Texas; Fort Smith, Arkansas; Fort Scott, Kansas; *shall have acquired jurisdiction of before that time.*" All laws heretofore enacted conferring jurisdiction upon United States Courts in Arkansas, Kansas, and Texas, outside of the limits of the Indian Territory as defined by law, as to offenses committed in said Indian Territory, as herein provided, are hereby repealed, to take effect on September 1st, 1896; and the jurisdiction now conferred upon said courts is hereby given from and after the date aforesaid to the United States Court in the Indian Territory. *Provided*, That in all criminal cases where said courts outside of the Indian Territory shall have on September first, eighteen hundred and ninety-six, acquired jurisdiction, they shall retain jurisdiction to try and finally dispose of such cases."

28 Stats. at Large, Chap. 145, p. 697.

IV.

Legal Propositions and Arguments.

A. The United States Court for the Indian Territory had no jurisdiction to indict, try or convict the petitioner for the offense of which he was convicted, previous to September 1st, 1896, because the offense with which he was charged, and committed on the 24th day of July, 1896, and at that time punishable by an infliction of the death penalty.

The reasons why that court had no jurisdiction of the offense with which the petitioner was charged, or of the petitioner, are as follows :

First. That previous to September 1st, 1896, exclusive original jurisdiction of the offense with which the petitioner was charged, and of which he was convicted and sentenced to death, was conferred upon the United States Court for the Eastern District of Texas.

Second. That previous to said date the United States Court for the Eastern District of Texas, had acquired jurisdiction of the offense and of the "case" existing against the petitioner by reason of the commission of said offense, and having "acquired jurisdiction" of said offense and of the "case" resulting from the commission of said offense, that court was by the *ninth* section of the act of March 1st, 1895, directed to retain jurisdiction of and "to try and finally dispose of" the case against the petitioner.

Third. The United States Court for the Indian Territory, acquired no jurisdiction to indict, try and convict the petitioner, because he was "found" or "brought into" the Southern District of that Court, as provided in Section 730 of the Revised Statutes because the offense with which the petitioner was charged was committed within the jurisdiction of a district previously established and defined by Statute, to-wit, the United States Court for the Eastern District of Texas, and that Court, at the date of the commission of the offense of which the petitioner was convicted, had exclusive original jurisdiction to try, convict and sentence the petitioner.

Fourth. That the United States Court for the Indian Territory had no jurisdiction to arrest, indict, try, or convict the petitioner, for an offense commit-

ted on the 24th day of July, 1896, where the punishment of the offense was "death or imprisonment at hard labor," for the reason, that the United States Court for the Eastern District of Texas, had and continued to exercise exclusive original jurisdiction over such offenses, committed in the Southern District of the United States Court for the Indian Territory until the 1st day of September, 1896; and consequently the United States Court for the Indian Territory could not legally acquire jurisdiction of the offense with which the petitioner was charged, nor of the petitioner previous to that date.

a. The first of the above reasons is made very clear by the language of the *eighteenth* Section of the Act of March 1, 1889; for by the express words of that section "exclusive original jurisdiction" of all offenses committed against the laws of the United States within that part of the Indian Territory attached to the Eastern Judicial District of Texas, of which jurisdiction was not given by that act to the United States Court for the Indian Territory, was conferred upon the United States Court for the Eastern District of Texas.

That Court by the *fifth* section of that act had "exclusive original jurisdiction" of such offenses against the laws of the United States committed within the Indian Territory as were "not punishable by death or by imprisonment at hard labor."

This is the construction placed upon that statute by this Court, in *Cook* vs. *United States*, 138 U. S., 157, 180, 181; and that construction necessarily excluded from the jurisdiction of the United States

Court for the Indian Territory, the offense with which the petitioner was charged, because the punishment for that offense was death.

(*b.*) The United States Court for the Eastern District of Texas, had, previous to September 1st, 1896, "acquired jurisdiction" of the "case" against the petitioner resulting from the commission of the offense with which he was charged, and upon which he was convicted and sentenced to death.

The jurisdiction of that Court was acquired by the commission of the offense charged against the petitioner. The commission of the offense charged, on the 24th day of July, 1896, made a "case" of which that Court "acquired jurisdiction" at the time the offense was committed. Jurisdiction is acquired, and may be exercised, whenever such acts are done or offenses committed, as call into existence the judicial power of the Court. It was therefore the exercise of jurisdiction by the United States Court for the Eastern District of Texas, for a commissioner of that court on the 25th day of July, 1896, to issue a warrant for the arrest of the petitioner, upon a charge, or for the commission of an offense which was within the exclusive original jurisdiction of that Court.

Jurisdi tion is declared to be "the power to hear and determine a cause;" it is *coram judice*, when ever a case is presented which brings this power into action."

United States vs. *Arredondo*, 6 Pet., 691, 709.

Again, in the case of the *State of Rhode Island* vs. *State of Massachusetts*, 12 Pet., 657, 718, "jur-

isdiction" is defined as "the power to hear and determine the subject matter in controversy, between parties to a suit; to adjudicate or exercise any judicial power over them."

The subject-matter in controversy in this case, was, whether or not on the 24th day of July, 1896, the petitioner committed the crime of which he has been convicted; and "exclusive original jurisdiction" to determine that controversy between the United States and the petitioner was conferred upon that Court by the eighteenth section of the act of March 1st, 1889; and that jurisdiction was retained by that Court by virtue of the provisions of the *ninth* section of the act of March 1st, 1895.

It is not a sufficient answer to the rule, therefore, for the respondent to aver that the said Court for the Eastern District of Texas, "never at any time acquired jurisdiction of the person of the petitioner," if that Court previous to September 1st, 1896, had "acquired jurisdiction" of the case against the petitioner, which resulted from the commission by him of the offense of which he has been convicted.

Jurisdiction of the case against the petitioner, was acquired by the commission of the offense charged in the warrant issued for his arrest; for it is not now doubted or denied that where a state of facts is shown or proved, which conferred jurisdiction, all further proceedings upon such facts is the exercise of the judicial power, which is authorized by the existence of jurisdiction over the subject-matter to which the specific facts relate.

In the case of *Grignons Lessee* et al, vs. *Astor*, 2 How , 320, 338, this Court asserted the above proposition in the following language:

> "If the law confers the power to render a judgment or decree, then the Court has jurisdiction; what shall be adjudged or decreed between the parties is judicial action by hearing and determining. It is a case of judicial cognizance and the proceedings are judicial."

There was no court which had jurisdiction of the offense charged against the petitioner, or that could legally take jurisdiction of the person of the petitioner for the commission of said offense on the 24th day of July, 1896, except the United States Court for the Eastern District of Texas. At that time there was no other judicial tribunal which had any power to render any judgment between the United States and the petitioner, in respect of the crime alleged to have been committed by him on that day.

Again, the facts alleged in the return, "that at the time of the commission of the offense the said United States Court for the Eastern District of Texas, was not in session, and no term of said Court was convened until long after the defendant was tried, convicted and sentenced to be hanged," was not the averment of facts which prevented that Court from acquiring jurisdiction of the case against the petitioner, resulting from commission of the offense charged, on the 24th day of July, 1896.

The averment of those facts by the respondent, was evidently inspired by the assumption that the United States Court for the Eastern District of Texas could not acquire jurisdiction of the case against the petitioner, until an indictment had been found against him by that Court, and that inasmuch as

that Court held no session until after the petitioner had been convicted and sentenced by the United States Court for the Indian Territory he could not be indicted by the United States Court for the Eastern District of Texas ; and for that reason that Court had not acquired jurisdiction of the case against the petitioner previous to September 1st, 1896. That theory of the case and that construction of the language of the *ninth* section of the act of March 1, 1895, puts the words "judicial action" in the place of the word jurisdiction. The finding of an indictment and trial was "judicial action," and the right to take any such action, resulted from the fact that the United States Court for the Eastern District of Texas had "acquired jurisdiction" of the case caused by the commission of the offense by reason of the provisions of the eighteenth section of the act of March 1st, 1889, and May 2, 1890.

The practical question suggested by the contention of the respondent as revealed in his return to the Rule issued herein, is, whether the commission of the offense charged against the petitioner, constituted a "case" of which the United States Court for the Eastern District of Texas could acquire jurisdiction, without the indictment and arrest of the petitioner.

In the case of the *United States* vs. *Volz*, 14 Blatch., 15, the question involved was, whether a "case" existed when only a complaint and warrant for the arrest of a person charged with conspiracy had been issued. The defendant appeared, waived examination, and offered Volz as bail for his appearance for trial in the District of Columbia. Volz

was accused of committing the crime of perjury in his affidavit made before the Commissioner in regard to his financial condition, and as to his responsibility as bail for the appearance of the defendant for trial. It was objected in the trial for perjury, that the oath had not been taken in a "case" in which a law of the United States authorized an oath to be administered.

Judge Benedict answered this objection in the following language:

> "Plainly, the word "case," as used in the statute, is not to be confined to suits or proceedings strictly in court. There are many instances where the laws of the United States authorize an oath to be administered, when no suit or criminal proceeding has been commenced."

In the case which here attracts the attention of the Court, criminal proceedings had been commenced against the petitioner, by the issuing of a warrant for his arrest by a Commissioner of the United States Court for the Eastern District of Texas, on the 25th day of July, 1896. The act of a Commissioner of that Court, in issuing a warrant for the arrest of the petitioner, was the judicial act of that Court. It was the commencement on that day, of criminal proceedings in the name of the United States against the petitioner, in the United States Circuit Court for the Eastern District of Texas, for the commission of an offense of which that Court had "exclusive original jurisdiction;" and the commencement of those proceedings against the petitioner, constituted a "case" of which that Court, on that date, acquired "exclusive original jurisdiction."

In the case of *In re Bogart*, 2 Sawyer, 396, 404, it was objected that no "case" against the defendant existed *until a charge was actually made*, although the offense for which the accused was put on trial, was committed when he was in the Naval Service of the United States; but the Court there held that the word "case" must be construed as the equivalent of the word "offense"; and that if the accused committed an "*offense*" against the laws and regulations adopted for the government of the Navy, that such offense constituted a "case arising in the land and naval forces," for which the accused was liable to be tried by a Court Martial.

c. The United States Court for the Indian Territory acquired no jurisdiction of the petitioner under the provisions of section 730 of the Revised Statutes. That Statute provides:

> "That the trial of all offenses committed upon the high seas or elsewhere out of the jurisdiction of any particular State or District, shall be in the district where the offender is found, or into which he is first brought."

At the time the offense with which the petitioner was charged was committed, the United States Court for the Indian Territory could take no jurisdiction of the petitioner, nor of the offense of which he was subsequently convicted, for the reason that the offense with which the petitioner was charged, was committed within the jurisdiction of the United States Court for the Eastern District of Texas; and the petitioner, after the commission of the offense for which he was arrested, tried and convicted, was "found" in that district.

The illegal arrest and detention of the petitioner for the purpose of having him tried by the United States Court for the Indian Territory, finds neither authority nor justification in that Statute.

d. The United States Court for the Indian Territory acquired no jurisdiction of the offense with with the petitioner was charged, nor of the petitioner, by virtue of his arrest by the Marshal of that Court, nor by his subsequent indictment, trial and conviction by that Court.

That Court had no jurisdiction to arrest, try, convict or sentence the petitioner for an offense committed on the 24th day of July, 1896, where the punishment for said offense was either "death or imprisonment at hard labor." Jurisdiction of that Court over the offense with which the petitioner was charged was not acquired and could not be exercised until the 1st day of September, 1896; since by the language of the ninth section of the act of March 1st, 1895, the jurisdiction previously conferred upon and exercised by the Courts of Arkansas, Kansas, and Texas, in respect to crimes committed in the Indian Territory was conferred upon or "given" to the United States Court for the Indian Territory, only "from and after the 1st day of September, 1896."

This proposition is established by the case of *Cook* vs. *United States*, cited *supra*. In that case this Court was brought to a consideration of the question as to whether or not the United States Court for the Eastern District of Texas, had jurisdiction of a prisoner who was charged with a murder committed in "No Man's Land" on the 25th day of

July, 1888; and the Court there held that by the act of March 1, 1889, "Congress intended to confer upon that Court jurisdiction to try such cases." By the express words of the act, the Courts to be held at Paris, Texas, were given exclusive original jurisdiction of "all offenses committed against the laws of the United States," within that part of the Indian Territory attached to the Eastern District of Texas, of which jurisdicrion was not given by the same act, to the Court established for that Territory. The only exception made is in the proviso to the eighteenth section, declaring, among other things, that no prosecution commenced before the passage of the act should be in any way affected by its provisions. This in connection with the previous paragraph of the same section defining the jurisdiction of the Court below, necessarily imports that where no prosecution had been commenced, it should have authority to try all offenses punishable by death or imprisonment at hard labor, committed, no matter when, within the new territory over which its jurisdiction was extended."

138 U. S., 180.

The *ninth* section of the act of March 1, 1895, will not be given a retroactive effect for the purpose of sustaining the jurisdiction of the United States Court for the Indian Territory to try and convict the petitioner, because at the time the offense was committed, the United States Court for the Eastern District of Texas had exclusive original jurisdiction of said offense; and there is no occasion of necessity resulting from any danger of a failure of justice for this Court to declare that the United States Court for the Indian Territory had jurisdiction of the offense com-

mitted in the Chickasaw Nation of the Indian Territory on the 24th day of July, 1896, when the statute declares that the jurisdiction of that Court, in respect to the offense charged against the petitioner, shall be acquired or exercised only "from and after the 1st day of September, 1896."

These principles of construction are again recognized by this Court in the case of *Caha* vs. *United States*, 152, U. S., 211, 214. In that case construction was given to the following language in the ninth section of the act of May 2, 1890, creating the Territory of Oklahoma, (26 Stats. at Large, p. 81):

> "All actions commenced in said Courts and all crimes committed in said Territory, and in the Cherokee outlet prior to the passage of this act, shall be tried and prosecuted and proceeded with until finally disposed of in the Courts now having jurisdiction thereof, as if this act had not been passed."

In that case the crime charged had been committed on the 3d day of January, 1890, and the indictment returned on the 22d of September, 1892. A demurrer to the indictment was interposed upon the following grounds:

1st. That the District Court in Kansas, had no jurisdiction over the alleged offense; 2nd. That the indictment charged no public offense.

This Court considering the first of these objections used the following language:

> "The contention is that by this section jurisdiction was given to the District Courts of Oklahoma, the indictment not having been found

until September, 1892, and the reservation of jurisdiction to the Kansas Court, being limited to the cases in which prosecution had already been commenced. We do not so understand the provision. The general grant of jurisdiction to the Oklahoma Courts is prospective in its operation. Such is the ordinary rule of construction, and the repeal of the act vesting jurisdiction in the Kansas Court is limited by a priviso which includes not only "actions commenced," but "crimes committed." Counsel lay stress upon the words "having jurisdiction thereof," and argue that courts have no jurisdiction of crimes, but only of actions for the punishment of crime. But this is placing too much stress upon a subordinate part of the sentence.

"If the scope of the sentence be as thus contended for, the words "crimes committed" are superfluous, and it would have been sufficient to have said "all actions commenced in said courts prior to the passage of this act." For the word "actions" may include both civil and criminal proceedings. But Congress went further, and provided not only that all "actions commenced in such courts," but also that all "crimes committed in said Territory" prior to the passage of this act, should be "tried, prosecuted and proceeded with until finally disposed of." Gramatically "crimes committed in said Territory," is an independent nomnative, and refers to matters different from those embraced within the term "actions commenced in such courts." It is fair under such cases, in order to determine the meaning, to omit the one nomnative, and read the sentence as though the other only were present, and so it will read "all crimes committed in said Territory prior to the passage of this act shall be tried, prosecuted, and proceeded with until finally disposed of in the courts now having jurisdiction thereof, as if this act had not been passed. So reading,

> the meaning cannot be doubtful. Whatever of jurisdiction the District Court of Kansas had at the time of the alleged offense remained unaffected by the act of May 2nd, 1890."
> 152 U. S., 214, 215

So with reference to the *ninth* section of the act of March 1, 1895, whatever of jurisdiction had been conferred upon the United States Court for the Eastern District of Texas by the acts of March 1st, 1889, and May 2nd, 1890, remained in that Court, and was to be exercised by it under the specific provisions of the *ninth* section of the act of March 1st, 1895, until the 1st day of September, 1896; and so much of jurisdicton as had been refused to the United States Court for the Indian Territory, remained denied to that court until "from and after that date." The jurisdiction and power withdrawn from the United States Courts of Arkansas, Kansas and Texas, and conferred upon the United States Court for the Indian Territory by said act of March 1st, 1895, was thereby "given from and after the date aforesaid."

It is exceedingly plain therefore, that the United States Court for the Indian Territory never acquired, and was never "given" jurisdiction of either the petitioner, or of the offense with which he was charged, for the reason that jurisdiction of the offense of which the petitioner was convicted, had been "acquired" by the United States Court for the Eastern District of Texas, under statutes then in force, previous to the 1st day of September, 1896; and jurisdiction of the offense having been "acquired," previous to that date, the *ninth* section of the act of March 1st, 1895, declared that said court "shall retain jurisdiction to try and finally dispose

of such cases." It necessarily follows, therefore, not only from the provisions of the *ninth* section of the act of March 1st, 1895, but from the facts stated in the petition, and admitted by the respondents return, that the United States Court for the Indian Territory, illegally exercised jurisdiction over the petitioner, and of his offense, subsequent to the time when the United States Court for the Eastern District of Texas had acquired jurisdiction of the "case" which existed by reason of the commission of the offense charged against the petitioner, and issuing of a warrant for his arrest by a Commissioner of that court. The United States Court for the Indian Territory could not acquire jurisdiction of the case against the petitioner until "from and after" the 1st day of September, 1896; and it could not legally acquire jurisdiction subsequent to that date, because the United States Court for the Eastern District of Texas, previous to that date, and on the 25th day of July, 1896, had "acquired jurisdiction" of the case made against the petitioner, by the commission of the offense charged against him, and by the issuing of a warrant for his arrest by that court on that date.

Conclusion

The petitioner, by his counsel, has not considered it useful to discuss the unseemly spectacle presented by the refusal of the respondent to surrender to the United States Marshal for the Eastern District of Texas, a prisoner of which he had acquired no lawful custody, and over whom he could legally exercise no jurisdiction. These propositions are true,

for the reason that at the time the surrender of the petitioner to the Marshal of the United States Court for the Eastern District of Texas was demanded, the United States Court for the Indian Territory was entirely without jurisdiction of the offense charged against the petitioner for any purpose.

The petitioner at the time his surrender was demanded by the Marshal for the United States Court for the Eastern District of Texas, *was illegally in the custody of the respondent.* This is exceedingly clear for the reason that at that time neither the United States Court for the Indian Territory, nor any Commissioner of said court, had jurisdiction of the offense charged against the petitioner, nor any authority to issue any warrant for his arrest; nor had the respondent as Marshal of said court any lawful authority to arrest the petitioner on said warrant and his detention by the respondent under the mandate of said warrant, and the subsequent proceedings had by said court subsequent to the issuing of said warrant was as illegal as his arrest.

The refusal of the United States Marshal for the court in the Indian Territory to surrender the petitioner to the Marshal of the United States Court for the Eastern District of Texas, was a gross violation of that spirit of comity which should exist between courts of the United States; and this breach of comity becomes more marked and offensive, when it is considered that the officer of the court which was guilty of this obvious impropriety had no jurisdiction of the petitioner or of the offense with which he was charged, when the surrender of the petitioner to the Marshal of the United States Court for the Eastern District of Texas was demanded and refused.

This court should therefore, order the Writ for which the petitioner prays, to issue herein, and, unless there exists and is shown to the court facts not now stated in the return, the petitioner should be discharged from the custody of the United States Court for the Indian Territory, and remanded to the custody of the United States Court for the Eastern District of Texas for trial by that court.

JOHN J. WEED,
Attorney for Petitioner.

167-120

Supreme Court, U. S.
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In the Supreme Court of the United States.

OCTOBER TERM, 1896.

Original, No. 13.

EX PARTE: CHARLES JOHNSON, PETITION FOR WRIT OF HABEAS CORPUS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

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EX PARTE: CHARLES JOHNSON, PETITION FOR WRIT OF HABEAS CORPUS.

BRIEF FOR THE UNITED STATES.

The petition here discloses that the petitioner, Charles Johnson, was indicted in the United States court for the southern district of the Indian Territory, on the 9th day of October, 1896; that he was arraigned, tried, and convicted in that court on the 17th day of October, 1896, of the crime of rape, committed by him on the 24th day of July, 1896.

Petitioner prays for the writ of *habeas corpus* and to "be discharged from the custody of the United States court for the Indian Territory and remanded to the custody of the United States court for the eastern district of Texas, for trial by that court."

The ground of the petition is alleged to be the want of jurisdiction in the United States court for the southern district of the Indian Territory to try and convict

him of the offense with which he was charged, the reason assigned being that the United States court for the eastern district of Texas had already acquired jurisdiction of the case.

In support of this contention the petition avers (p. 1) "that the petitioner was arrested and committed to jail by C. L. Stowe, marshal of the United States court for the southern district of the Indian Territory," and then avers (p. 2):

> That on the 25th day of July, 1896, J. C. Gibbons, a commissioner of the United States court for the eastern district of Texas, issued a warrant for the arrest of petitioner and placed the same in the hands of the United States marshal for the eastern district of Texas; and that said marshal demanded the surrender of the petitioner by the marshal for the southern district of the United States court for the Indian Territory, and that the surrender of the petitioner by said marshal was refused; and that ever since said date the petitioner has been illegally restrained of his liberty.

It will be observed, that while no date is mentioned when the arrest and commitment of the petitioner by the marshal of the United States court for the southern district of the Indian Territory were made, yet that they must have been made at some time prior to the 25th day of July, 1896, when the commissioner of the United States court for the eastern district of Texas issued his warrant, or else, that although that warrant was issued on the 25th day of July, 1896, and went into the hands of the United States marshal for the eastern district of Texas, it was not executed or attempted to be executed

by him until after the marshal for the southern district of the Indian Territory had arrested the petitioner and held him in custody.

The failure to aver the date when the marshal for the eastern district of Texas attempted to execute the warrant that had been placed in his hands is a fatal defect in the case presented in the petition.

It may be—and in this case must be presumed, in the absence of any averment to the contrary in the petition—that when the marshal for the eastern district of Texas presented his warrant to the marshal for the southern district of the Indian Territory, who then had petitioner in his custody, the petitioner had been arrested by due process of law.

The act approved March 1, 1895 (28 Stat., 693), entitled "An act to provide for the appointment of additional judges of United States courts in the Indian Territory, and for other purposes," provides:

> SEC. 7. That all prosecutions for crimes or offenses of which the United States court in the Indian Territory shall have jurisdiction, shall be had within the district in which said offense shall have been committed, and in the court nearest or most convenient to the locality where it is committed, to be determined by the judge on motion to transfer the trial of the case from one court to another.
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> SEC. 9. That the United States court in the Indian Territory shall have exclusive original jurisdiction of all offenses committed in said Territory, of which the United States court in the Indian Territory now has jurisdiction, and after the 1st day of September,

1896, shall have exclusive original jurisdiction of all offenses against the laws of the United States committed in said Territory, except such cases as the United States court at Paris, Tex., Fort Smith, Ark., and Fort Scott, Kans., shall have acquired jurisdiction before that time. * * *

All laws heretofore enacted conferring jurisdiction upon United States courts held in Arkansas, Kansas, and Texas, outside of the limits of the Indian Territory, as defined by law, as to offenses committed in said Indian Territory, as herein provided, are hereby repealed to take effect on September 1, 1896; and the jurisdiction now conferred by law upon said courts is hereby given from and after the date aforesaid to the United States court in the Indian Territory: *Provided*, That in all criminal cases where said courts outside of the Indian Territory shall have on September 1, 1896, acquired jurisdiction they shall retain jurisdiction to try and finally dispose of such cases. Every case, civil or criminal, pending in the United States court in the Indian Territory shall be tried and disposed of by the court where the same is pending, unless the venue therein be changed, as herein provided.

Now, suppose that the warrant issued by the commissioner for the eastern district of Texas, and placed in the hands of the marshal for that district on the 25th day of July, 1896, was not executed by him or presented by him to the marshal for the southern district of the Indian Territory, who had petitioner in his custody *until after the 1st day of September, 1896*. Could it be contended that the mere issuance of the warrant, without its execution, gave jurisdiction to the court from which the warrant was issued?

If, under the provisions of the act of March 1, 1895, the United States court for the southern district of the Indian Territory acquired no jurisdiction in such cases until September 1, 1896; if the United States marshal of that court had no lawful authority to make arrests in such cases until after that date, and if, as appears here, the marshal of that court had arrested the petitioner and held him in custody, and was still holding him when the marshal for the eastern district of Texas presented his warrant and demanded the prisoner, will it be presumed—can this court presume—in the absence of any averment in the petition of the date when such warrant was presented and demand made, that it was prior to September 1, 1896?

The whole case of the petitioner hangs upon this single fact.

He charges that the court by which he was tried and convicted had no jurisdiction. *No jurisdiction when?* Certainly not at the time the offense was committed, for that is wholly immaterial. Did it have jurisdiction when it tried the man? If so, *when* did that jurisdiction first attach? Plainly, when the hand of that court, through its ministerial officer, was first laid upon the prisoner.

Half a dozen courts, of as many jurisdictions, may issue their process for the arrest of an offender. But only to that court whose process is first executed does jurisdiction to try him attach.

Why, with all the minute particularity elsewhere displayed in this petition as to times, and places, and persons, is there such silence as to the vital date of *when* jurisdiction attached?

It will be observed that in the section quoted above from the petition, it is averred that on the 25th day of July, 1896, the commissioner for the eastern district of Texas "issued a warrant for the arrest of petitioner, * * * and that ever since said date the petitioner has been illegally restrained of his liberty."

Now, bewildering obscurity reigns here!

For *what* offense was the warrant issued by the commissioner for the eastern district of Texas? Was it for the same offense for which the petitioner was arrested by the marshal for the southern district of the Indian Territory? It is not so averred in the petition, either expressly or by remote implication. For all that appears here, the two marshals may have sought his arrest for two distinct offenses.

And what is meant by the statement that "ever since *said date* the petitioner has been illegally restrained of his liberty? The only date given is 25th of July, 1896. Is it pretended that on that day the petitioner was in the hands of the marshal for the southern district of the Indian Territory? It is not so averred in the petition or admitted in the return to the rule by the marshal.

The return of Marshal Stowe to the rule against him shows the following facts, viz:

On 24th July, 1896, warrant was placed in his hands by Walcott, United States commissioner for the southern district of Indian Territory, for arrest of petitioner on charge of rape upon one Pearl McCormick.

On 25th of July, 1896, warrant was issued by Gibbons, United States commissioner for the eastern district

of Texas, for arrest of petitioner on charge of rape upon one Pearl McCormick.

A United States deputy marshal for eastern district of Texas demanded of respondent (Stowe, marshal) a surrender of petitioner in obedience to said writ, but this was refused.

It nowhere appears in this return *when* this demand and refusal were made, whether before or after the 1st of September, 1896.

On 27th of July, 1896, Wolcott, commissioner, issued warrant directing respondent to arrest petitioner on the charge of "assault with intent to rape upon one Mrs. N. A. Marshall."

On the 17th of October, 1896, at the regular term of the United States court for the southern district of the Indian Territory, petitioner was indicted for an "assault with intent to commit rape upon the person of the said Mrs. N. A. Marshall."

On the 9th of October, 1896, he was indicted in the same court for the crime of rape committed upon the person of Pearl McCormick.

On the 17th of October, 1896, petitioner was tried in said court "upon the said charge of rape," and was found guilty; and on the 23d of October, 1896, was sentenced to be hanged.

For what offense was this petitioner tried and convicted in the United States court for the southern district of the Indian Territory? For rape, to be sure. But upon whom? The only warrant issued by the commissioner for the eastern district of Texas charged petitioner with rape committed upon one Pearl McCormick.

The warrants issued by the commissioner for the southern district of the Indian Territory charged him with the same offense, and also with assault with intent to commit rape upon the person of Mrs. N. A. Marshall.

It does not appear that the two warrants which charged him with rape upon Pearl McCormick were for the same act.

It does not appear from anything before the court that the jurisdiction of the court for the southern district of the Indian Territory had not completely attached before the warrant issued by the commissioner of the eastern district of Texas was executed, if, indeed, it was ever executed.

THE UNITED STATES COURT FOR THE EASTERN DISTRICT OF TEXAS NEVER DID ACQUIRE JURISDICTION OVER THIS CASE.

No process issued at all from this court for the arrest of petitioner. The only process was from the United States commissioner of the eastern district of Texas, upon whom there was conferred by statute judicial functions altogether distinct from those exercised by a United States district court.

But even this warrant was never executed. The person whom the warrant directed the marshal to arrest was found by the marshal to be already in custody, and so beyond the power of arrest. His warrant, then, was never executed; and hence the jurisdiction of the commissioner who issued it was never acquired over the case.

> The jurisdiction of the district court over parties is acquired only by a service of process or their voluntary appearance.

Herndon v. *Ridgway*, 17 How., 425;
Mexican Central Railway v. *Pinkney*, 149 U. S., 209.

The petitioner here did not voluntarily appear before the commissioner, and the warrant was never executed upon him.

A United States commissioner is simply a committing magistrate. (*United States* v. *Martin*, 9 Saw., 90.) He has the same power as State magistrates and no greater. (*United States* v. *Horton*, 2 Dill., 94.)

And it would be regarded as a very novel suggestion that a warrant of arrest issued by a magistrate, but for some cause not executed, vested in the court having authority to indict—and, in a proper case, to hear and determine—jurisdiction over the person upon whom the warrant of arrest was not executed.

The act of March 1, 1895, after providing for the appointment of commissioners, in section 4, said:

> That said commissioners, acting as justices of the peace in criminal cases, shall have jurisdiction to hold preliminary examinations and discharge, hold to bail, or commit, in cases of offenses, which, under the laws applicable to the Territory, amount to felonies. Appeals may be taken to the United States court in the Indian Territory in said districts, respectively, from the final judgment of said commissioners, acting as justices of the peace, in all cases.

So, it would seem, not only that the jurisdiction of the commissioner who issued the warrant did not attach, because of the failure to execute the warrant, but, even if the warrant had been executed and the jurisdiction of

the commissioner had thereby attached, it would not neccessarily follow that the United States court for the eastern district of Texas could be said, within the meaning of the ninth section of the act, to have thereby "acquired jurisdiction over the case."

But it is insisted that this is governed by the case of *Caha* v. *United States* (152 U. S., 211). We think the cases will be found to be wholy unlike in a very essential particular.

In the *Caha Case* the offense was committed on January 3, 1890, at Kingfisher, Oklahoma. At that time the district court in Kansas had jurisdiction generally of offenses against criminal laws of the United States committed in Oklahoma.

On the 2d of May, 1890, Congress passed an act creating the Territory of Oklahoma. In section 9 of that act provision was made for transferring to the supreme and district courts in said Territory jurisdiction as to all causes of action and offenses in said Territory theretofore exercised by United States district courts; "but all actions commenced in such courts and crimes committed in said Territory prior to the passage of this act shall be tried and prosecuted and proceeded with until finally disposed of in the courts now having jurisdiction thereof, as if this act had not passed."

Under this section this court held, that although Caha was not indicted until after the Territory of Oklahoma was created for the offense committed before that date, yet, because Congress had provided that all "crimes

committed in said Territory" prior to the passage of the act should be "tried, prosecuted, and proceeded with until finally disposed of," that the Federal and not the Territorial court had jurisdiction to try the offender.

The provisions of the act of March 1, 1895, are very different. Section 9, in which the criminal jurisdiction of the court is defined, repeals the laws conferring jurisdiction upon certain United States courts:

> *Provided*, That in all criminal cases, where said courts outside the Indian Territory shall have, on September 1, 1896, acquired jurisdiction, they shall retain jurisdiction to try and finally dispose of such cases. Every case, civil or criminal, pending in the United States court in the Indian Territory shall be tried and disposed of by the court where the same is pending, unless the venue therein be changed, as herein provided.

So that, here, the courts must *have acquired* jurisdiction of the case before September 1, 1896, in order to try and dispose of it.

There is no provision here, such as appears in the Oklahoma act, as to *offenses committed* within the Territory prior to the passage of the act. But the only condition under which the court of the original government is permitted to try and determine a case is that it shall have acquired jurisdiction of the case before the new government was formed.

Here it is plain that the United States court for the eastern district of Texas had not acquired jurisdiction over this case prior to September, 1896.

THE PETITION FOR THE WRIT OF HABEAS CORPUS SHOULD SHOW AFFIRMATIVELY THAT THE JUDGMENT OR SENTENCE UNDER WHICH THE PETITIONER IS CONFINED IS VOID.

The application for the writ should set forth *facts*, the legal effect of which alone should make it prima facie apparent that the petitioner was entitled to the writ of habeas corpus.

> *Cuddy's Case*, 131 U. S., 280;
> *Terry's Case*, 128 U. S., 289;
> *United States* v. *Pridgeon*, 153 U. S., 48.

Here, as we have seen, although the prayer for the writ of habeas corpus rests upon the ground that the court by which the petitioner was tried and convicted was without jurisdiction and that another court had acquired jurisdiction by virtue of a warrant issued for the arrest of the petitioner by a commissioner of that court, yet the petition wholly fails to aver or show when the warrant issued by the commissioner was executed, if at all, or to charge, or to state facts which preclude the presumption that the warrant so issued, if executed at all, was not executed after September 1, 1896, when the exclusive jurisdiction of the court, by which he was tried and convicted had certainly vested.

Section 9 of the act of March 1, 1895, provides, as we have seen—

> That the United States court in the Indian Territory * * * after the 1st day of September, 1896, shall have exclusive original jurisdiction of all offenses against the laws of the United States

committed in said Territory, except such cases as the United States court at Paris, Tex., Fort Smith, Ark., and Fort Scott, Kans., *shall have acquired jurisdiction of before that time.*

It does not appear in this petition, even when supplemented by the return of the respondent, that the United States court in Texas had acquired jurisdiction of this case before the 1st of September, 1896.

THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF THE INDIAN TERRITORY ALONE HAD JURISDICTION.

Certainly the prisoner was in the custody of the marshal of that district, under a legal process, either under a warrant issued by Walcott, United States commissioner, on the 24th of July, 1896, or under another warrant issued by him on the 27th day of July, 1896.

The petitioner was certainly not held under the jurisdiction of the United States court for the eastern district of Texas. He was held to answer an indictment which was found in the United States court for the southern district of the Indian Territory on the 17th of October, 1896, or the 9th of October, 1896. He was placed upon trial on the indictment of the 9th of October, 1896, and was tried and convicted on that indictment. The offense for which he was indicted and convicted was committed in Oklahoma. At the time of its commission it was cognizable only in the United States court for the eastern district of Texas, perhaps; but that court did not in any manner take cognizance of the offense or acquire jurisdiction thereof.

After September 1, 1896, the court for the eastern district of Texas could no longer acquire jurisdiction of this offense; but it was justiciable only in the United States court for the southern district of the Indian Territory, because to that court alone had Congress given the authority in the act of March 2, 1895, to try and determine such cases.

HOLMES CONRAD,
Solicitor-General.

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